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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SONORO INVEST S.A., a Panamanian
corporation,

Plaintiff,

vs.

ROBERT MILLER, an individual; ANDREW
SHERMAN, an individual; COSTAS
TAKKAS, an individual; and STEPHEN
GOSS, an individual,

Defendants

and

ABAKAN, INC., a Nevada corporation,

Nominal Defendant.

Case No. : 2:15-cv-02286-JAD-CWH

**JOINT EMERGENCY MOTION FOR
CLARIFICATION OF ORDER
GRANTING STAY OF DISCOVERY
(ECF NO. 94)**

Defendant Andrew Sherman (“Sherman”), by and through his attorneys of record, Patrick
J. Reilly, Esq. and Andrea M. Champion, Esq. of the law firm of Holland & Hart, together with

Plaintiff Sonoro Invest, S.A. (“Plaintiff” or “Sonoro”), by and through its counsel of record, hereby move on an emergency basis for clarification of the Magistrate Judge’s Order Granting the Motion to Stay Discovery (ECF No. 94) in the above-entitled action. This Joint Motion is based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file in this action, and any oral argument this Court may allow.

DATED this 27th day of May, 2016.

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
JOINT EMERGENCY MOTION FOR CLARIFICATION
OF ORDER GRANTING MOTION TO STAY DISCOVERY ORDER (ECF NO. 94)**

I.

INTRODUCTION AND RELEVANT BACKGROUND

On May 4, 2016, Defendant Stephen Goss (“Goss”) filed an Emergency Motion seeking a stay of discovery in light of his dispositive motion challenging the Court’s exercise of personal jurisdiction (ECF No. 70). Defendant Costas Takkas (“Takkas”) joined Goss’ Motion to Stay on May 5, 2016, as Takkas also filed a dispositive motion challenging jurisdiction (ECF No. 75). Sonoro filed its Omnibus Response on May 11, 2016 (ECF No. 79). Mr. Sherman did not join or

1 otherwise respond to Goss' Motion to Stay Discovery.

2 On May 20, 2016, the Magistrate Judge issued an Order granting the Motion to Stay
3 Discovery (ECF No. 94). The Order does not specify whether the stay applies broadly to all
4 discovery in the action, or whether it is limited to particular defendants. Further, the Order does
5 not identify the defendants against whom discovery is stayed. *Id.*

6 Based on the motions of the parties and the Court's Order, Mr. Sherman interpreted the
7 stay as broadly applying to all discovery. Therefore, on May 25, 2016, Mr. Sherman informed
8 Plaintiff that, in light of the stay, he would not produce further discovery responses, including
9 supplemental responses previously scheduled to be produced on May 31, 2016. In response, also
10 on May 25, 2015, Sonoro advised Mr. Sherman that it viewed the stay as limited to Goss and
11 Takkas.

12 Mr. Sherman and Plaintiff, though counsel, participated in a meet and confer on May 26,
13 2016 and agreed to seek clarification from the Court as to the scope of the discovery stay.
14 Accordingly, Defendant Andrew Sherman and Plaintiff Sonoro Invest S.A. make the instant
15 emergency motion for clarification of the Court's Order Granting the Motion to Stay Discovery.

16 II.

17 LEGAL ARGUMENT

18 The Court possesses the inherent procedural power to reconsider, rescind, or modify its
19 interlocutory orders so long as the Court has jurisdiction. *City of L.A. Harbor Div. v. Santa*
20 *Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). A magistrate judge possesses inherent
21 power to clarify pretrial orders. 28 U.S.C. § 636(b)(1)(A).

22 Here, the scope of the Court's Order Granting Goss' Motion to Stay was ambiguous, as
23 reasonably interpreted by the moving parties, and as a result, the moving parties request
24 clarification, based on the following positions:

25 Mr. Sherman

26 It appears that this Court intended to stay discovery as to the entire action. Goss' Motion
27 to Stay Discovery requested a blanket stay of all discovery (ECF No. 70), which was granted.
28 Further, although Takkas joined Goss' Motion to Stay, the Court's Order granting the stay did

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1 not specifically grant the joinder (ECF No. 75, 94). As Takkas was not specifically identified in
2 the Court's Order, it appears that the Court intended to issue a blanket stay of discovery as to all
3 parties. Moreover, Plaintiff's Omnibus Response conceded that the granting of Goss' Motion
4 would "needlessly eviscerate the Court's Scheduling Order and effectively halt all discovery vis-
5 à-vis Defendant Andrew Sherman, who did not file a dispositive motion." (ECF No. 79.) Since
6 the Court considered the Plaintiff's Omnibus Response when it granted a stay of discovery, it
7 appears that the stay was intended to apply to all discovery in this action.

8 **Plaintiff Sonoro Invest S.A.**

9 Defendants Goss and Takkas only sought individual stays of discovery due to their
10 dispositive motions challenging jurisdiction. Mr. Sherman, on the other hand, filed no such
11 dispositive motion so as to lend a similar argument for a stay of discovery against him. Nor did
12 Mr. Sherman join the motions requesting a stay of discovery, or otherwise move with authority
13 to support a stay on his own behalf. Therefore, Sonoro asserts the Court's Order only stayed
14 discovery with respect to Defendants Goss and Takkas by virtue of their dispositive motions and
15 their individual requests for a discovery stay. Mr. Sherman initially shared this interpretation as
16 he later sought reconsideration of his motion for a protective order as to certain of Sonoro's
17 discovery requests. (ECF No. 93). The Court then confirmed that discovery was to proceed
18 against Mr. Sherman by setting a briefing schedule on his discovery motion. (ECF No. 97).
19 While this litigation may practically encounter delays in the future given the pending dispositive
20 motions, this case is proceeding against Mr. Sherman regardless of any other defendant's actions.
21 Therefore, Sonoro respectfully asserts that the Court's Order only stayed discovery as to
22 Defendants Goss and Takkas.

23 ///

24 ///

25 ///

Mr. Sherman and the Plaintiff have met and conferred with respect to their different interpretations of the Court's Order granting a discovery stay and each party recognized the need for the Court's clarification. Therefore, Mr. Sherman and Plaintiff Sonoro Invest S.A. respectfully the Court's issue an order clarifying the scope of the stay of discovery.

DATED this 27th day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2016, a true and correct copy of the foregoing **JOINT EMERGENCY MOTION FOR CLARIFICATION OF ORDER GRANTING STAY OF DISCOVERY (ECF NO. 94)** was served on counsel through the Court's electronic service system as follows:

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